men whose humanitarian motives it is impossible to doubt, but the moving springs of the policy of nations are deep-based in their solid self-interest. They are not to be found in the abstract principles preached by professors or embodied in the resolutions of peace congresses. By accepting the principle of the inviolability of private property at sea, you would be inflicting a blow upon our naval power, and you would be guilty of an act of political suicide. The change would mark the sunset of England's greatness and her fall from the high place amongst the nations of the earth" (p. 143).

Professor Westlake contributes an eight page note on Belligerent Rights at Sea to give the weight of his authority to the conclusions of the writer. To him the proposed "extension to the sea of a principle admitted on land" is a "topsy-turvy" policy which is based on a false analogy because the immunity of private enemy property is not itself by any means absolute on land (p. 147).

One is convinced at the conclusion of a careful reading of the arguments of the advocates of immunity of private property at sea and the opponents of the same that there is a fundamental difference of purpose which has been unconsciously overlooked. The parties divide themselves into those who would deal an effective blow at all unscrupulous advocacy of war for gain by depriving all of the one remaining chance, particularly the naval influences, and thus to make war improbable save in a very few causes, and on the other side those who regard war as inevitable in the present state of society and who would retain one of the strongest impulses in waging war in the interest of national defense.

ELBERT J. BENTON.

Die Verwaltungsrechtswissenschaft Beiträge zur Systematik und Methodik der Rechtswissenschaften. By DR. LUDWIG SPIEGEL. (Leipzig: Duncker and Humblot. 1909. Pp. viii, 222.)

The tendency towards subdividing all subjects of inquiry and regarding each as a separate science finds expression in this recent work from the pen of Professor Spiegel of the University of Prague. As the title indicates, Dr. Spiegel seeks to establish administrative law on a completely independent scientific basis. The work sets forth the task of a science of administrative law and discusses the relations between this science, if science it be, and other branches of legal study, including constitutional law, private law, criminal law and the law of procedure.

After treating of the historical development of administrative law as a subdivision of constitutional law, the author urges that the time has now come for the complete separation of the two. Though the problems with which each deals arises from the same phenomena of governmental activity, the two examine these phenomena with different ends in view.

Thus runs the argument. The theory of the separation of governmental powers has been exploded. Governmental power is a unit. But in each state this power must be exercised through various agencies. Constitutional law deals with the relationship of these agencies to each other and to the citizen body and seeks to find the proper balance between them. It asks in each case: "Through what agency shall power be exercised?" To discover the task of administrative law, we must first start with some conception of administration. The scholar is free to select that which seems to him best. Its validity must be tested by the results obtained. Too narrow are the conceptions derived from the study of constitutional law—for example, that administration is merely the activity of administrative organs, or all governmental activity with the exception of legislation, or with the exception of legislation and judicial decision. That conception should be chosen which is most universal. One unbiased by the study of constitutional law must regard administration as including every activity of the state. The object of administrative law, therefore, is to set forth the legal rules which obtain for all governmental activity. "What shall be done?" asks administrative law. Constitutional law contents itself with the inquiry: "Who shall do it?"

Thus modestly administrative law asks to be released from the shackles which have prevented its free and systematic development within the confines of constitutional law. For constitutional law, insists Dr. Spiegel, since it deals with the relationship between a given set of governmental agencies, must ever remain the law of a particular state. But administrative law is concerned with all phases of governmental activity. "The tasks which the state has to perform have in the course of thousands of years increased so tremendously that administration with perfect right can say: '*Nihil humani a me alienum puto.*'" Since these activities are common to different states, there is a universal as well as particular administrative law. Both deal with the same material. But particular administrative law treats as homogeneous only those *Rechtsnormen* which serve some special end of administration (highway law, school law, etc.), while "universal administrative law examines each single phenomenon of administrative law to discover

therein the universal element existing in all forms of administrative law." To our surprise, the author adds that this universal knowledge must be developed not deductively from *a priori* concepts, but inductively from positive law, "*ex jure quod est.*"

Such is the basis and method of treatment,—abstract and logical, rather than genetic or descriptive. A work more foreign to the temper of the American jurist could not readily be imagined. We lag too far behind in abstract consideration of law as a whole to indulge as yet in any such treatment of special topics. And our habit of thought makes us prone to look askance at wide generalizations deduced from such rarefied abstractions and leaves us skeptical whether such philosophical speculation has any practical value in advancing the study of our subject.

The author's conception of law nowhere definitely appears. But he seems to look beyond any system of rules promulgated by some body clothed with authority to certain ideal canons of governmental policy. Legal critics who seek their law in a more tangible source would prefer the title of *Die Verwaltungswissenschaft.* And if the work is to embrace a consideration of the rules governing every activity of the state, its scope would be more fairly indicated by *Die Wissenschaft des öffentlichen Rechts.* In truth, the author, in his endeavor to discover what administrative law really is, *in rerum natura,* seems merely to have applied a special term to the study of those relationships which have long been grouped under the more general one.

Professor Spiegel's delimitation of the respective spheres of constitutional and administrative law could never have been reached by induction. It clearly cannot be applied to American conditions. It is presumptuous to withhold from constitutional law any interest in the question what functions the government shall undertake when those functions are found defined and limited in the constitution itself, and the bulk of what for years we have known as constitutional law is concerned with these very questions. American scholars will be more inclined to leave to constitutional law the field it already possesses and adopt as the basis of their work in administrative law a more restricted definition, such, for example, as that of M. Journe, who regards *droit administratif* as "that branch of the public law which studies how the executive power administers the state with the coöperation and under the control of the legislative power." This will confine administrative law as well as constitutional law to the consideration of existing governmental agencies and preclude the possibility of a science of universal administrative

law dealing with norms of law in control everywhere. This conception of universal law, based on the analogy of the natural sciences, seems to leave out of account the element of human volition and caprice, involved in all positive law. We shall do well if ever we develop satisfactorily a science of comparative administrative law.

THOMAS REED POWELL.

An Introduction to the History of the Development of Law. By HON. M. F. MORRIS, Associate Justice of the Court of Appeals of the District of Columbia (Washington, D. C.: John Byrne and Company, 1909. Pp. 315.)

In the preface we are told that this book is "the outgrowth of some lectures delivered several years ago before the post-graduate class of the University of Georgetown;" and that it makes "no pretensions to originality or novelty." It may be added that there is little evidence that the author is acquainted with the critical literature of any of the many subjects with which he deals. Except the prefatory acknowledgment of "great indebtedness to Messrs. Pollock and Maitland's *History of English Law*, and to Prof. Guy Carleton Lee's admirable work on *Historical Jurisprudence*," there are no citations of modern authorities, while the references in most cases to ancient writers or codes are evident at second hand. There are no footnotes. Judge Morris believes, apparently that bibliography is not a vital part of a subject in modern graduate study. Indeed, the dogmatic tone of the old-time lawyer, who ignores the lay literature, pervades the volume. It is astonishing with what serenity the learned judge treads a field, bristling with hard problems, which the trained scholar approaches only with fear and trembling.

The first chapter, on the Origin and Nature of Law, and the Law of Nature, is a curious product of antediluvian beliefs and arrested education. The author's scientific fitness for the delicate task which he has undertaken may be judged from an opening paragraph:

"Whether we accept the fashionable, but in this regard wholly unsupported and irrational theory of evolution that would develop civilization from barbarism, barbarism from savagery, and the existence of savage men from a simian ancestry, or whether we adopt the more reasonable theory, sustained by the uniform tenor of all history, that barbarism and savagery are merely lapses from a primordial civilization,